UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

NEW LINK LTD., CHERLAYNE, INC., INN SITE, INC., FORRER COMMUNITY LIVING CTR., INC., and LAFAYETTE SPECIAL CARE CTR., INC. [1]
A Single Employer

and **Case 7-RC-22601**

MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO[2]
Petitioner

APPEARANCES:

Gregory Bator, Attorney, of Birmingham, Michigan, for the Employer.
Melvin John Evans, of Detroit, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[3] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The Employer's names appear as amended at the hearing.
[2] The Petitioner's name appears as corrected based on its designation in other cases filed with the Region.
[3] Both parties waived the right to file briefs.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

Petitioner contends that New Link Ltd., Cherlayne, Inc., Inn Site, Inc., Forrer Community Living Ctr., Inc., and Lafayette Special Care Ctr., Inc. are a single Employer. It seeks to represent a single unit of approximately 27 full-time and regular part-time direct care workers employed by those employers; but excluding guards and supervisors as defined in the Act. The Employer took no position on whether the five employers are a single employer, but contends that there is insufficient community of interest among direct care workers employed at the five facilities to find a single multi-facility unit.

I find that the five separately named facilities operate as an integrated enterprise and possess all the factors for finding a single employer. I further find that given the similarity of skills, duties, and working conditions of employees at the various locations, the regular interchange between employees working at the facilities, the Employer's centralized administration of the daily operations and labor relations, and the facilities' relatively close geographic distance, a multi-facility unit, encompassing direct care workers employed at all five facilities, is appropriate.

Business Operations

All five facilities are state funded and licensed adult foster care homes that provide 24-hour care, including feeding, bathing, and transportating residents to appointments, to live-in mentally disabled persons in the metropolitan Detroit area. For licensing purposes, the five facilities are listed as separate entities, but all are owned and operated by one individual, Cedell Murff. He is the president of each employer and utilizes the New Link Ltd. facility as the headquarters for all the facilities. Four of the facilities are located in Detroit, Michigan. The fifth, Lafayette Special Care Ctr., Inc., is located in Lincoln Park, Michigan[4]. These

[4] I take administrative notice that the driving distance between the New Link, Ltd. headquarters and the

five facilities constitutes the only adult foster care homes owned by Murff.

Supervision

Each facility has its own home manager, who performs the day-to-day operations at her respective foster home, including overseeing resident food purchases and general recordkeeping. However, all home managers report directly to Murff regarding all personnel matters, and it is Murff who makes decisions on all labor relations issues, including the hiring of employees, employee pay raises and benefits, disciplinary decisions up to and including discharge, and employee policies. Murff testified, without delving into specifics, that each location has its own personnel policies and house rules, and that he formulates and then implements the polices and rules at each facility. Murff also temporarily reassigns direct care workers to other facilities. Additionally, Murff conducts staff meetings with direct care workers at the various foster homes and his signature appears on the pay checks for employees at all five facilities. Murff utilizes an office manager at the New Link Ltd. headquarters, but the record does not indicate that she plays any significant labor relations role.

Direct Care Workers: Duties, Working Conditions, and Interchange

The job duties of the 27 direct care workers are essentially the same at all five facilities. They are all responsible for the "hands on" care of each resident. They cook their meals, feed them, bathe them, take them out on various excursions and, if necessary, escort them to medical appointments. With respect to working conditions, direct care workers at the various facilities are paid every two weeks at essentially the same rate of pay, their work schedules are posted in similar fashion, and all report to a home manager and Murff. In regard to interchange, temporary transfers from one facility to another are a fairly common occurrence. Accordingly to Murff, all employees might temporally work at any of the other five facilities at which they are not employed.[5] These transfers are often due to employee absenteeism and the affected facility's attempt to maintain the proper level of care for its residents. When Murff is alerted to a personnel shortage at a particular facility that can not be filled within that facility, he calls a direct care worker at another facility and requests that they report to the facility experiencing the personnel shortage. Permanent transfers from one facility to another, while less common than temporary transfers, do occur on occasion.[6]

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other four foster homes ranges between approximately 5 miles and 16 miles. The driving distance between any two of the facilities also ranges from approximately 5 miles and 16 miles.

[5] Two witnesses testified that they have worked at all five facilities on a temporary basis. One has been transferred sometimes for two or three consecutive days. The other is temporarily transferred to another specific facility about twice a month and recently worked there for a week.

[6] To accommodate a desired change in shift, one witness permanently switched facilities with another employee.

Analysis

Single Employer

In order for the petitioned-for unit to be appropriate, the five facilities must first be found to constitute an integrated enterprise in such a way that they are treated as a single employer. The term "single employer" applies to situations where nominally separate entities operate as an integrated enterprise in such a way that "for all purposes, there is in fact only a single employer." ***NLRB v. Browning-Ferris Industries***, 691 F.2d 1117, 1122 (3d. Cir. 1982). The principal factors that the Board considers in determining whether the integration is sufficient for single-employer status are the extent of (1) common ownership; (2) interrelation of operations; (3) common management; and (4) centralized control of labor relations. Not all the criteria need be shown to establish single-employer status. ***Alexander Bistritzky***, 323 NLRB 524 (1997); ***Denart Coal Co.***, 315 NLRB 850, 851 (1994), enfd. 71 F.3d 486 (4th Cir. 1995). Centralized control of labor relations is considered critical to a single employer finding. ***Alabama Metal Products***, 280 NLRB 1090 n.1 (1986).

Murff is owner and president of all five entities and the business operations of all five are administered from the New Link Ltd. headquarters. Murff possesses and exercises the immediate and ultimate authority with respect to the hiring, firing, disciplining, setting wage rates, and establishing work rules and policies for direct care workers at all five facilities. Murff also personally reassigns direct care workers from one facility to another, signifying both the centralized control of labor relations and the interchange among employees at the various facilities. Although each facility may have some autonomy in its day-to-day operations, Murff exercises all business and policy-making functions at all the locations.

In examining the evidence relating to each of the four criteria examined above, it is apparent that a single-employer relationship exists among the five facilities. ***Alexander Bistritsky,*** supra. Accordingly, I find New Link Ltd., Cherlayne, Inc., Inn Site, Inc., Forrer Community Living Ctr., Inc., and Lafayette Special Care Ctr., Inc., are a single employer.

Scope of Unit

A finding of single employer status does not end the inquiry. Petitioner contends that a single unit of direct care workers is appropriate. The Employer argues that separate single facility units are appropriate. Resolution of unit composition issues begins with examination of the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. ***Bartlett-Collins Co.,*** 334 NLRB 484 (2001). In determining whether the unit sought is appropriate, the Board is guided by the principle that it need find only an, not the most, appropriate unit. ***Overnight Transportation Co.,*** 322 NLRB 723 (1996) and cases cited. A union's desire is a relevant, although not a dispositive, consideration. ***E.H. Koester Bakery & Co.,*** 136 NLRB 1006, 1012 (1962).

It is well established that when a petitioner seeks to represent a single facility unit of a multi-facility employer, such a unit is presumptively appropriate and that the burden is on the party opposing the single-facility unit to present evidence overcoming the presumption. ***Trane,*** 339 NLRB No. 106 (July 29, 2003); ***J & L Plate***, 310 NLRB 429 (1993). However, the presumptive appropriateness of a single-facility unit is inapplicable where, as here, the petitioner seeks to represent a multi-facility unit. ***Capital Coors Co***., 309 NLRB 322 n.1 (1992).

Thus, a determination must be made with respect to the community of interest among direct care workers employed at the five facilities. The Board determines whether a multilocation or single location unit is appropriate based on its evaluation of the community of interests among employees working at the different locations, including: (1) similarity in employee skills, duties, and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facility and extent of union organization; and (5) employee choice. ***Id.*** at 325.

Applying the foregoing factors, I conclude that there is sufficient community of interest to warrant including direct care workers employed at all five locations in a multi-facility bargaining unit. The skills, duties, and working conditions of direct care workers at all the facilities are essentially the same. There is regular interchange, as direct care workers are transferred from one facility to another on a temporary basis to cover absences. Murff is president of, and owns, all the employers. He controls all labor and management functions, including the authority to hire, fire, discipline, set wage rates, and establish work rules and policies. The facilities are all in relatively close proximity to each other. Finally, there is no bargaining history involving the employees. ***Id.***

5. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time direct care workers employed by the Employer at its facilities located at New Link Ltd., 14531 Vaughan, Detroit, Michigan, Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan, Inn Site, Inc., 6821 Sarena, Detroit, Michigan, Forrer Community Living Ctr., Inc., 19950 Forrer, Detroit, Michigan, and Lafayette Special Care Ctr., Inc., 1256 Lafayette, Lincoln Park, Michigan; but excluding guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 3rd day of February 2004.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

Classifications

440-3350-2500-0000
440-6750-0000-0000

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **February 10, 2004.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by **February 17, 2004.** .

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be stopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.